

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS)	
a/k/a Emmanuel E. Elder,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 05-013-GMS
)	
WARDEN RAFAEL WILLIAMS)	
et al.,)	
)	
Defendants.)	

MEMORANDUM

At Wilmington this 26th day of February, 2010

I. INTRODUCTION

On January 11, 2005, the plaintiff, Jimmie Lewis ("Lewis") who proceeds *pro se* and has been given leave to proceed *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. (D.I. 2.) The case was screened pursuant to 28 U.S.C. § 1915 and § 1915A. (D.I. 25, 26.) At the time Lewis filed his complaint, he was an incarcerated individual within the Delaware Department of Correction. He has since been released and is now being held in the Cuyahoga County Jail in Cleveland, Ohio, apparently awaiting extradition to Delaware.

Various defendants were dismissed by the court on March 6, 2006, August 30, 2006, April 10, 2007, and September 29, 2009. (D.I. 26, 41, 98, 164.) On January 5, 2010, the court dismissed the case for Lewis' failure to show cause why the case should not be dismissed for failure to prosecute and to keep the court informed of his current address. (D.I. 170.) The next day, on January 6, 2010, the clerk of court received notification of Lewis' current address, and the dismissal order was mailed to him at the Cuyahoga County Jail, Cleveland, Ohio, where he

has been incarcerated since December 12, 2009. (D.I. 171.) On January 25, 2010, Lewis filed a motion requesting a ninety day extension of time to respond to the January 5, 2010 show cause order, and on January 28, 2010, he filed a motion to reopen the case. (D.I. 172, 173.) In turn, the defendants Debra Muscarella and Dr. Rodgers filed responses/objections to the motions. (D.I. 174, 179.) The State defendants did not file an opposition to Lewis' motions. Lewis has also filed a statement to further support the reopening of the case. (D.I. 181.) On February 4 and 9, 2010, Lewis filed notices of appeals of the January 5, 2010 dismissal order. (D.I. 175, 178.)

II. DISCUSSION

As of August 21, 2009, Lewis kept the court abreast of his current address. (D.I. 163.) A month later, on September 29, 2009, the court ruled on several motions that Lewis had filed. (See D.I. 164.) The order also required Lewis to show cause, on or before October 14, 2009, why seventeen defendants should not be dismissed for failure to serve process within 120 days of filing the complaint, pursuant to Fed. R. Civ. P. 4(m). (*Id.* at ¶ VII.) Lewis did not respond to the order because he failed to keep the court advised of his current address, and the September 28, order was returned as undeliverable. (D.I. 165.) The court docket reflects that Lewis failed to advise the court of his current address from September 29, 2009 through January 5, 2010, but he explains the delay was due to his December 12, 2009 incarceration in Ohio. Lewis does not explain his dilatory behavior prior to his Ohio incarceration.

In reviewing the file it appears that some discovery has taken place but, according to the Muscarella and Dr. Rodgers, Lewis has not responded to their discovery requests. Hence it is not clear that discovery is complete. Nor have the parties filed dispositive motions.

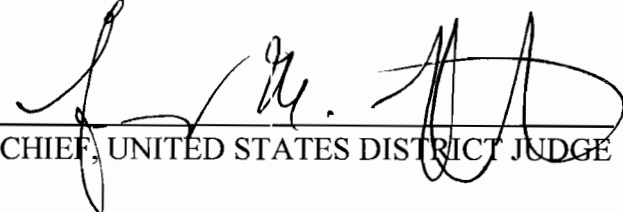
While the court does not countenance the actions of Lewis in failing to update the court with his current address and in failing to respond to court orders, the court is mindful that Lewis actively participated in this case on a fairly regular basis prior to his recent incarceration in Ohio.

III. CONCLUSION

For the above reasons, the court will grant Lewis' motion to reopen in part, and will deny the motion for a ninety day continuance. (D.I. 172, 173.) The court will also impose deadlines for discovery, the filing of dispositive motions, and for Lewis to respond to the previously entered show cause order.

An appropriate order will be entered.

Feb 26, 2010
Wilmington, Delaware


CHIEF, UNITED STATES DISTRICT JUDGE

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FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS)
a/k/a Emmanuel E. Elder,)
)
Plaintiff,)
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v.) Civ. Action No. 05-013-GMS
)
WARDEN RAFAEL WILLIAMS)
et al.,)
)
Defendants.)

ORDER

NOW THEREFORE, at Wilmington this 26th day of Feb., 2010,

IT IS HEREBY ORDERED that:

1. The motion to reopen is **granted** to the extent that the case is reopened and **denied** in all other respects. (D.I. 173.)
2. The motion for a ninety day continuance is **denied**. (D.I. 172.)
3. The plaintiff will be given one final opportunity to comply with the court's September 28, 2009 order, as follows:

A. On or before March 22, 2010, the plaintiff shall show cause why the defendants Lt. Mitchel, Corporal A. Goins, Corporal Harriford, Corporal Cumberback, C/O Presley, C/O Ms. Newman, C/O Soul, C/O A. Armstrong, C/O Mack Renolds, C/O Tamiko Chaffer, Dr. Joshi, Dr. Boston, Georgia Sutton, Mr. Fish, Diane Hernandez, Nurse Inna, and Dr. Ali should not be dismissed for failure to serve process within 120 days of filing the complaint, pursuant to Fed. R. Civ. P. 4(m) .

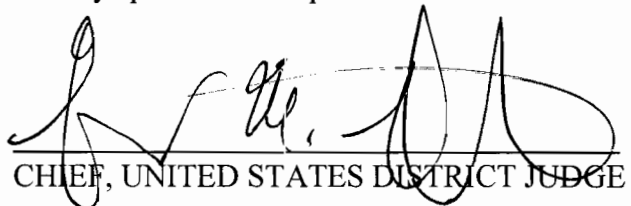
B. Lewis is placed on notice that there will be no further extensions and that failure to timely comply with this paragraph will result in dismissal of the above listed defendants.

4. The following deadlines are imposed:

A. **Discovery.** If not already complete, all discovery will be initiated so that it will be completed on or before June 28, 2010.

B. **Summary Judgment Motions.** All summary judgment motions, with accompanying briefs and affidavits, if any, will be served and filed on or before August 30, 2010. The answering brief will be filed on or before September 13, 2010, and the reply brief due on or before September 27, 2010.

C. Any requests for extensions of time as set forth in this Scheduling Order must be made no later than twenty-one days prior to the expiration of time.


CHIEF, UNITED STATES DISTRICT JUDGE